

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL CASE NO. 1:08cr25

UNITED STATES OF AMERICA,)

)

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vs.

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CARROL LEE OWENS.)

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ORDER

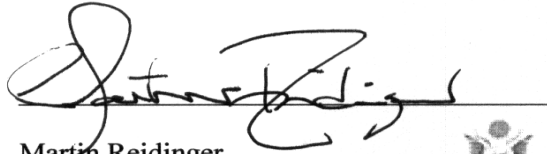
THIS MATTER is before the Court on the Defendant's *pro se* Motion to Correct Sentence [Doc. 72].

The Defendant was sentenced on November 24, 2008 and his conviction and sentence were affirmed by the United States Fourth Circuit Court of Appeals on December 31, 2009. [Doc. 56; Doc. 71]. On appeal, one of the issues raised was whether the sentencing court erred by refusing to allow the Defendant to withdraw his guilty plea. [Doc. 71]. In this filing, the Defendant asks that he be allowed to withdraw his plea agreement due to a breach of contract and/or that this Court correct his sentence by removing an upward departure.

The Defendant has not made this motion pursuant to 28 U.S.C. §2255 and the Court will not construe it as such. See, e.g., United States v. Blackstock, 513 F.3d 128 (4th Cir. 2008), *citing* Castro v. United States, 540 U.S. 375, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003). The Court thus has no authority to correct the Defendant's sentence. See, Fed.R.Crim.P. 35.

IT IS, THEREFORE, ORDERED that the Defendant's *pro se* Motion to Correct Sentence [Doc. 72] is hereby **DENIED**.

Signed: March 9, 2010


Martin Reidinger
United States District Judge

